

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Writ Petition No.33594 of 1997

DATED 28-3-2007

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BETWEEN

S.Hari Haran

.. Petitioner

And

The Industrial Tribunal cum Labour Court,
Warangal and others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.33594 of 1997

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ORDER:

Heard Sri S.N.Ansari, learned counsel appearing on behalf of
Sri N.Guru Gopal & Sri S.R.Sanku, learned counsel for the petitioners.

The award of the Industrial Tribunal-cum-Labour Court,
Warangal in I.D.No.27 of 1994 dated 28.8.1997 is challenged in this
writ petition.

Despite service of notice, the respondents have not entered
appearance before this Court and the orders now passed are on the
basis of the material available on record and the submissions made on
behalf of the petitioner.

The petitioner herein worked as an Accountant in the Bangalore and Hyderabad branches of the respondent Company and was subsequently transferred to Warangal branch. The Warangal unit of the respondent company was closed in the month of November, 1992. Since the petitioner's representation to be posted elsewhere was of no avail, he approached the Industrial Tribunal by way of an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). On the basis of the pleadings, the Industrial Tribunal framed the following two questions for determination.

- “ 1)Whether the petition filed under Section 2-A(2) of the Industrial Disputes Act is maintainable?
- 2)Whether the termination of the petitioner violating the provisions of Section 25-F of the I.D Act by closing the respondent's Transport Company is justified and if so what kind of relief the petitioner is entitled to?”

On the first question, the Industrial Tribunal held that the petitioner comes under the definition of a 'workman' entitled for protection under Section 25-F of the Industrial Disputes Act and that the respondents had closed the transport company without issuing closure notice and without paying him compensation and that the respondents had illegally acted by ousting the services of the petitioner and as such the application under Section 2-A(2) of the Act was maintainable. On the second question, the Tribunal held that it was the admitted case of the parties that the petitioner had worked in the respondent transport company from 9.6.1979 and, at the time of its closure, he was working as a branch manager and drawing total emoluments of Rs.1440/- per month and when the Warangal branch of the respondent transport company was closed in November 1992, the respondents ought to have given notice pay and retrenchment

compensation. The Tribunal held that the respondents had violated the provisions laid down under Section 25-FFF of the Act at the time of closure of its branch at Warangal and that the closure was illegal. The Tribunal further held that, as per Section 25-FFF of the Act, the petitioner was entitled to notice pay and compensation from the date of his appointment i.e. 9.6.1979 till the date of closure in the month of November 1992. Accordingly, the Tribunal directed the respondents to pay one month's notice pay and compensation of 15 days average pay for every completed year of service from the date of appointment till the date of closure of the respondent company i.e. from 9.6.1979 to 10.11.1992.

It is necessary to note that while the petitioner examined himself as WW1 and marked Exs.W1 to W4, the respondents neither adduced any oral evidence nor documentary evidence.

The short question which arises for consideration in this writ petition is whether the requirement of giving notice, and payment of compensation, under Section 25-FFF is a condition precedent to retrenchment or whether it is capable of compliance subsequent thereto.

Sri S.N.Ansari, learned counsel appearing on behalf of the petitioner, would contend that closure of an undertaking as contemplated under Section 25-FFF is closure of the company as a whole and not merely one of its branches, and the petitioner who had worked earlier at Bangalore and Hyderabad, was posted at Warangal, wherein the closure of the branch had resulted in cessation of his employment, only to deprive him of his employment with the respondent company. Both these contentions do not merit

acceptance. As held in **S.M.NILAJKAR V. TELECOM DISTRICT MANAGER**^[1], the term 'undertaking' is not defined in the Industrial Disputes Act and 'undertaking' is a concept narrower than an 'industry'. An undertaking may be a part or a whole of the industry. Thus, even a part of the company would constitute an 'undertaking' and consequently the Warangal branch of the respondent company would fall within the ambit of an 'undertaking' and closure thereof would undoubtedly fall under Section 25-FFF of the Industrial Disputes Act. It is not necessary that the provisions of Section 25-FFF would be attracted only when the respondent company as a whole is closed and not merely when its branch has been closed down. The other contention that the petitioner was deliberately posted to Warangal, where closure of the branch had resulted in cessation of his employment does not necessitate examination since Sri S.N.Ansari, learned counsel for the petitioner would fairly concede that this contention has not been raised before the Tribunal and it has been urged for the first time before this Court. In certiorari proceedings under Article 226 of the Constitution of India, it is the validity of the award of the Industrial Tribunal which is under examination and a plea, based on facts, which has not been urged or raised before the Industrial Tribunal does not necessitate examination when raised for the first time before this court.

Now the question as to whether Section 25-FFF of the Act is a condition precedent for closure of an undertaking. Section 25- FFF of the Act as it originally stood reads thus:-

“ Compensation to workmen in case of closing down of undertakings:-1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject

to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workman had been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workmen under clause (b) of Section 25-F shall not exceed his average pay for three months.

(Explanation:- An undertaking which is closed down by reason merely of-

- i) financial difficulties (including financial losses); or
- ii) accumulation of undisposed stocks; or
- iii) the expiry of the period of the lease or licence granted to it; or
- iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on:

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section).

(1-A). Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of Section 25F, if –

- a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;
- b) the service of the workman has not been interrupted by such alternative employment and
- c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub-sections (1) and (1-A) the expressions 'minerals' and 'mining operations' shall have

the meanings respectively assigned to them in clauses (a) and (d) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957).

2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under clause (b) of Section 25-F but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that Section for every completed year of continuous service or any part thereof in excess of six months.”

The scope and purport of Section 25-FFF of the Act came up for consideration before this Court in **M.NARASIMULU V. COMMISSIONER OF INDUSTRIES**^[2] (judgment in WP No.8062 of 1984 dated 8.12.1986) and this Court held that according to the plain language of sub-section (1) of section 25-FFF the only right given to the workers is to get notice and compensation as prescribed under Section 25-F which they are entitled to be paid and that it was not practicable to hold that even in cases of non- compliance with Section- 25 FFF, the closure should be declared as illegal. It is necessary to note that Section 25-FFF was subsequently amended by Section 6 of AP Act 32 of 1987 which was published in the gazette on 27.7.1987. Section 6 of the AP Act 32 of 1987 reads thus;

“In sub-section (1) of Section 25-FFF of the principal Act,

- a) before the existing proviso, the following proviso shall be inserted namely;-
provided that the prior payment of compensation to the workman shall be a condition precedent to the closure of any undertaking”;
- b) in the existing proviso for the words “provided that” the words “provided further that” shall be

substituted.”

In view of the said amendment to Section 25-FFF of the Act, prior payment of compensation to the workman shall be a condition precedent to the closure of any undertaking. Therefore, where compensation has not been paid to a workman prior to closure of the undertaking, the closure itself would be rendered illegal. As a result of the said amendment, the law laid down in catena of judgments of the Supreme Court relating to Section 25-F of the Act that failure to pay compensation as prescribed thereunder would render termination of the services illegal and void ab initio would be equally applicable to Section 25-FFF and as a result, non payment of compensation to the workman concerned would render the very closure of the undertaking illegal. As a result, the petitioner-workman must be held to have been continued in service and entitled for payment of all consequential benefits arising there from.

The writ petition is allowed. The award of the Tribunal in ID.No.27 is quashed and the petitioner shall be deemed to be in service of the respondent company and shall be entitled for all benefits as a consequence thereof. No costs.

RAMESH RANGANATHAN,J

Dt: 28.3.2007

msv.

[\[1\]](#) 2003(II) LLJ 359 (SC)

[\[2\]](#) 1987 (1) ALT 736